MUNICIPAL CORPORATIONS—FRIGHTENING HORSES—STREETS.—*STOKES v.* SAC CITY, 144 N. W. (IOWA) 639.—Defendant allowed a third party to exhibit within the limits of the public highway, an animal confined in a cage. Plaintiff's horse became frightened at the cage, ran away causing injuries to the plaintiff. *Held,* the city was liable in damages to the plaintiff for the injuries caused by the horse becoming frightened at the obstruction in the highway.

By the weight of authority, objects within the limits of a highway naturally calculated to frighten horses of ordinary gentleness may constitute such deficiencies in the way as to render the town liable, even though so far removed from the traveled path as to avoid all danger of collision. *Foshay v. Town of Glenhaven,* 28W is., 288; *Morse v. Richmond,* 41 Vt. 435; *Newison v. New Haven,* 7 Am. Law Reg. 83. In Massachusetts the rule appears to be that the mere fright of a horse at an obstacle in the highway which results in injury is not sufficient to hold the town liable, though the object was of a character naturally calculated to frighten horses. *Cook v. Charleston,* 98 Mass. 80; *Bowes v. Boston,* 155 Mass. 334; *Champlin v. Village of Pen Yan,* 34 Hun. 33; a dead animal lying in the street, *Chicago v. Hay,* 75 Ill. 530; a pig sty containing pigs, *Bartlett v. Hooksett,* 48 N. H. 18, have been held to be objects naturally calculated to frighten horses. But lumber piled temporarily in the highway, *Chamberlin v. Enfield,* 43 N. H. 356, and a steam roller used in repairing streets, *McMulkin v. Chicago,* 92 Ill. App. 331; building material temporarily placed upon a portion of the street, *Loberg v. Amherst,* 87 Wis. 634, have been held to be objects not naturally calculated to frighten horses. The liability of the town rests primarily upon whether the use to which the highway was put was reasonable and necessary for travel and the incidents of travel or whether the highway was allowed to be used as a place of business, storehouse, or some other purpose for which the highway was not primarily laid out. If the latter, the town should be responsible.

NEW TRIAL—FAILURE TO REQUEST INSTRUCTIONS.—LINITZKY V. GORMAN, 146 N. Y. SUP., 313.—*Held,* where plaintiff, in a malicious prosecution did not request a charge that, under the uncontroverted evidence, he was entitled to substantial damages, the court cannot, on motion, set a verdict for him for nominal damages, though he was entitled, as a matter of law, to substantial damages.

The general rule is that a question of law available, but not raised at the trial, cannot be raised on motion for a new trial. *Holdsworth v. Tucker,* 147 Mass., 572; *Beals v. Beals,* 20 Ind., 163. In *St. Louis & S. F. R. R. Co. v. Werner,* 70 Kan., 190, it was held, an erroneous instruction, not excepted to, is not ground for a new trial. In some cases, however, where there has been positive error in the charge, a new trial has been granted, though the instruction was not ex-

cepted to. *Nulton v. Croskey,* 111 Mo. App., 18; *McCann v. Ullman,* 109 Wis., 574; *Lochrane v. Solomon,* 38 Ga., 286. In *Brigden v. Osmun,* 36 N. Y. S., 1025, a new trial was allowed where an instruction was given based on a misapprehension of testimony, though no request was made or exception taken, and in *Moore v. Balten,* 5 Misc. (N. Y.), 520, the broad rule was laid down that a court may allow a new trial, in its discretion, for failure to give proper instructions, though no request was made. However, *Freeland v. Southern Ry. Co.,* 70 S. C., 427, a case very similar in its facts to *Linitzky v. Gorman,* held in accord with the principal case, the rule of which seems to be well established. Although the rule undoubtedly works hardships in some instances, as in the principal case, where it led to the denial of a clear legal right, adherence to it leads to uniformity and certainty in procedure, and a less stringent rule, it may be argued, would cause subterfuge and delay.

PHYSICIANS AND SURGEONS—SERVICES RENDERED IN EMERGENCY—RIGHT TO COMPENSATION.—SCHOENBERG v. ROSE, 145 N. Y. S., 831.—The president and secretary of a corporation were, during the pendency of a trial against a corporation, in a court room, when the president became suddenly ill and fell unconscious on the floor. The secretary and counsel for the corporation called for a doctor, whereupon the plaintiff, who was in the court room, responded and rendered medical assistance. *Held,* that the fact that the secretary and counsel summoned plaintiff did not render them liable for the service, since they, being under no legal obligation to furnish medical services to the deceased, occupied the relation of mere strangers.

When a person calls a physician to care for another rendered by sudden injury unable to act for himself and to whom he stands in no relationship which creates any obligation to furnish necessary medical care, and no express undertaking is entered into, the law does not presume from the mere summoning of the physician and requesting him to care for the injured, any implied promise to pay for the services. *Starrett v. Miley,* 79 Ill. App., 658; *Dorion v. Jacobson,* 113 Ill. App., 653. One is not under any implied obligation to pay for the services of a physician called to attend a minor living with his family and supported by him, but not otherwise relator to him, though he acquiesced in the attendance. *Holmes v. McKim,* 109 Iowa, 245; *Raukin v. Beale,* 68 Mo. App., 32. The rule appears to be that if the party summoning the physician is under only a moral obligation to the party needing the medical aid, and there is no express promise to pay the physician, the party summoning the physician is not liable for the services.

RELIGEOUS SOCIETIES—RIGHTS OF PEWHOLDERS.—WITTHAUS v. ST. THOMAS' CHURCH, 146 N. Y. S., 279.—*Held,* a pewholder has no title to the church edifice nor to the soil, but possesses only a usufructuary right to the use of the pew when the building is open for services, subject to the reasonable regulations of the church.